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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re CELESTE N., a Person Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

M.N.,

Defendant and Appellant.

D053901

(Super. Ct. No. NJ13609)

APPEAL from a judgment of the Superior Court of San Diego County, Michael J. Imhoff, Commissioner. Affirmed.

M.N. appeals a juvenile court judgment terminating her parental rights over Celeste N. and choosing adoption as the preferred permanent plan. M.N. contends insufficient evidence supports the court's finding the beneficial parent-child relationship

to adoption is inapplicable. (Welf. & Inst. Code,¹ § 366.26, subd. (c)(1)(B)(i).) We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In August 2006 Celeste was born to M.N. and her boyfriend, Rafael T.² The parents have a history of domestic violence. On February 15, 2007, the baby was exposed to a violent confrontation between them over "a disastrous Valentine's [D]ay." The following March 12 police were called to the home because the parents were arguing. The San Diego County Health and Human Services Agency (the Agency) removed Celeste from the home and filed a petition on her behalf.

The parents continued to live together. They were provided services, and at the six-month date, the Agency reported they had made significant changes in their relationship in an effort to reunify with Celeste. The Agency recommended an additional six months of services. With the concurrence of Celeste's counsel, the Agency exercised its discretion to begin a 60-day home visit on October 1, 2007. At the six-month hearing, the court found the parents had made substantive progress with their case plans, and it continued their services and restored physical custody of Celeste to them.

In February 2008 Rafael told the social worker there were problems in the parents' relationship, and they had not been honest about the true situation at home. He said they had been separated for more than a month, and M.N. had a new boyfriend that had been

¹ All statutory references are to the Welfare and Institutions Code.

² Rafael is not involved in this appeal.

coming to the home. M.N. said she and Rafael had separated, but were still living in the same house. He reported that they had fights on February 12 and 13, and during the incidents he was holding Celeste. Further, M.N. broke his truck window and threw his belongings out of the house. On February 14, M.N. obtained a restraining order against Rafael based on his physical abuse of her while Celeste was present.

The Agency returned Celeste to foster care and filed a supplemental petition based on the continuing domestic violence. At the 12-month date, the Agency recommended the termination of reunification services and the scheduling of permanency planning hearing under section 366.26. At a contested hearing, the court found there was not a substantial probability that Celeste would be returned home by the 18-month date. The court terminated reunification services and scheduled a section 366.26 hearing.

In the assessment report, the social worker wrote Celeste is adoptable "especially since she is a healthy adorable toddler. She presents a happy spirited demeanor and interacts well with those around her. She has brown curly hair and a bright smile. She is a joyful [two-]year[-]old child in good general health both physically and developmentally." At the time of the report, there were 46 certified adoptive families in San Diego County willing to adopt a child with Celeste's characteristics, and she was living with relatives who were "eagerly committed to adopting her."

At a contested section 366.26 hearing, the court found Celeste was adoptable and not one of the exceptions to adoption was applicable. The court terminated parental rights and selected adoption as the preferred permanent plan.

DISCUSSION

M.N.'s sole contention is that the court erred by finding the parent-child beneficial relationship exception to adoption inapplicable.

"After reunification services have terminated, the focus of a dependency proceeding shifts from family preservation to promoting the best interest of the child including the child's interest in a 'placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child. [Citation.]' . . . At a section 366.26 hearing the juvenile court has three options: (1) to terminate parental rights and order adoption as a long-term plan; (2) to appoint a legal guardian for the dependent child; or (3) to order the child be placed in long-term foster care." (*In re Fernando M.* (2006) 138 Cal.App.4th 529, 534.)

"Adoption, where possible, is the permanent plan preferred by the Legislature." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573 (*Autumn H.*). At a section 366.26 hearing, the court must terminate parental rights and free the child for adoption if it determines by clear and convincing evidence the child is adoptable, and none of the seven exceptions listed in section 366.26, subdivisions (c)(1)(A) and (B) applies to make termination of parental rights detrimental to the child. (§ 366.26, subd. (c)(1).) It is the parent's burden to show the applicability of one of the exceptions to adoption. (*In re Fernando M., supra*, 138 Cal.App.4th at p. 534.)

One exception to adoption applies if termination of parental rights would be detrimental to the child because "[t]he parents have maintained regular visitation and

contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) This court has interpreted the phrase "benefit from continuing the relationship" to refer to a relationship that "promotes the well-being of the child *to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents*. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be *greatly harmed*, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575, italics added.)

"Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult's attention to the child's needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.] The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

In *In re Casey D.* (1999) 70 Cal.App.4th 38, 51, we explained: "[T]he *Autumn H.* language, while setting the hurdle high, does not set an impossible standard nor mandate day-to-day contact. Rather, the decision attempts to describe the nature of the beneficial

parent-child exception to the general rule that adoption should be ordered when the child is likely to be adopted. Another way of stating the beneficial parent-child concept described in *Autumn H.* is: a relationship characteristically arising from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship. A strong and beneficial parent-child relationship might exist such that termination of parental rights would be detrimental to the child, particularly in the case of an older child, despite a lack of day-to-day contact and interaction. The *Autumn H.* standard reflects the legislative intent that adoption should be ordered unless exceptional circumstances exist"

"A biological parent who has failed to reunify with an adoptable child may not derail adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent. [Citation.] A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree, but that does not meet the child's need for a parent." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

"The factors to be considered when looking for whether a relationship is important and beneficial are: (1) the age of the child, (2) the portion of the child's life spent in the parent's custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child's particular needs." (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 467.) "[F]or the exception to apply, the emotional attachment between the child and

parent must be that of parent and child rather than one of being a friendly visitor or friendly nonparent relative, such as an aunt." (*Id.* at p. 468.)

The Agency concedes that M.N. maintained regular visitation with Celeste. It contends M.N. did not satisfy the second prong of the test by showing Celeste would benefit from a continued relationship with her.

By the time of the section 366.26 hearing, Celeste was almost 26 months old, and she had spent only 10 months with M.N. Celeste had been living with her paternal grandparents for approximately four and a half months. In the assessment report, the social worker wrote that M.N. and Celeste enjoyed pleasant and affectionate visits, and she called M.N. "Mum." However, "[a]t the end of each visit, Celeste does not exhibit any distress." Further, the social worker wrote that while Celeste "does have a relationship with [the parents], . . . it appears she views them more in a friend-type role instead of [as] a parent responsible for her needs. Like most children, she enjoys spending time with them, especially since she receives one-on-one attention. Celeste does not exhibit any distress at the end of her visits and it appears she is not affected by the separation."

The social worker believed "there is a developing bond comprised of mutual attachment" between Celeste and her grandparents. She explained the grandparents' "consistency in care and nurturance" created a "sense of secure attachment" for Celeste, and "she is being provided with a true family-like environment where her needs have been consistently met. In the time she has been in placement, she is secure with her surroundings; she prances comfortably around the home and knows exactly where

everything is. *She does not ask for or seek her mother or father.* She refers to her paternal grandmother as 'Gamaw' and paternal grandfather as 'Papi.' " (Italics added.) The social worker also explained that "although [Celeste] may experience the grief normally associated with termination of parental rights, . . . the parent/child bond is not one that is so strong that it will outweigh the benefits of adoption for her."

At the hearing, the social worker testified that although M.N. and Celeste had pleasant visits, the child exhibited no distress when they ended. Further, Celeste had "developed a really good attachment" to her grandparents, and she "seeks the [grandparents] in meeting her needs."

M.N. testified that Celeste called her "Mommy." M.N. told the court, "I love my daughter so much."

The court acknowledged that M.N. has "a deep and abiding love for your daughter." In finding the parent-child exception inapplicable, the court noted "the evidence is . . . clear that *there is no separation anxiety at the end of the visits with either parent, and that Celeste does not ask for either parent in between the visits she does have.*" (Italics added.) The court concluded that "whatever benefit may have been conferred upon Celeste by contact each parent has had with Celeste, is greatly outweighed by her need for stability and placement."

The issue here is subject to a substantial evidence standard of review. (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 467.) "On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and

resolving all conflicts in support of the order." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

We conclude substantial evidence supports the court's finding. Although visits were pleasant, M.N. made no showing that the relationship between mother and daughter outweighed the well-being Celeste would gain in a permanent home with adoptive parents. There was no hint the termination of parental rights would harm Celeste.

M.N. relies principally on *In re S.B.* (2008) 164 Cal.App.4th 289 (*S.B.*), in asserting the court erred by not applying the beneficial parent-child relationship exception. In *S.B.*, this court reversed the trial court's finding the exception did not apply there after concluding the child would be greatly harmed by the loss of the significant, positive relationship she had with her father. He had complied with every aspect of his case plan and was devoted to his daughter, and she wanted to live with him. (*Id.* at pp. 294-295.) The issue in this appeal is whether substantial evidence supports the court's finding that the beneficial parent-child relationship exception is inapplicable, and given our conclusion that there is such evidence, we are not required to undertake factual comparisons between *S.B.* and this case.

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

BENKE, J.

HUFFMAN, J.